IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SECOND DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 2520 of 2002

Between:

The Commissioner, Sattenapalli Municipality,

Sattenapalli, Guntur District.

..... PETITIONER

AND

1. Mallela Siva Brahmam, S/o Sriramulu,

H.No.20-5-59, 18th ward, Nagannakunta,

Sattenapalli, Guntur District.

2. The Presiding Officer, Labour Court,

Guntur.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or Direction, more particularly one in the nature of *Writ of Certiorari* calling for the records relating to the Award passed by the 2nd respondent i.e. the Presiding Officer, Labour Court, Guntur in I.D.No.167/1995 dated 20.4.2001 and Notification vide G.O.Rt.No.2524, Labour Employment, Training & Factories (LAB.I) Department, dated 26.09.2001 and quash the same as illegal, arbitrary and contrary to the provisions of Industrial Disputes Act, 1947.

Counsel for the Petitioner: MR. E. SAMBASIVA PRATAP

Counsel for the Respondents: Mr. P. Raghavendra Reddy

The Court made the following:

ORDER:

Heard Sri B. Sambasiva Pratap, the learned standing counsel appearing for the petitioner and also Sri P. Raghavendra Reddy, the learned counsel appearing for the first respondent.

2. The petitioner, who is said to be the management filed this writ petition, *inter alia*, seeking to assail the award passed by the second respondent in I.D.No.167 of 1995, dated 20.04.2001 as notified in G.O.Rt.No.2524 of Labour Employment Training & Factories (Lab.I) Department, dated 26.09.2001.

3. The facts, in brief, requires to be considered for disposal of the writ petition is that the first respondent herein was engaged as N.M.R. on daily wage basis by the petitioner herein on 01.04.1987 and he has been discharging his duties from 01.04.1987 to 31.08.1990 and from 01.09.1990 onwards he abstained himself from duty. Subsequently, since some of his colleagues who have been continuing in service were regularized, the first respondent approached the 2nd respondent by invoking the provisions under Section 2-A (2) of Industrial Disputes Act, 1947 (hereinafter referred to as I.D. Act) on the ground that there is illegal termination and also the petitioner was not allowing to perform his duties. After holding an enquiry therein, the petitioner took a defence that the first respondent wantonly abandoned duty and therefore, he is not entitled to any indulgence. It was also held that in view of the fact that the first respondent was abstained duty from 1.9.1990 onwards, it cannot be said that there is valid termination in the absence of mandatory provisions under Section 25 (F) of I.D. Act. Admittedly, there being no such complaints, the requirement of termination automatically becomes void and the first respondent is entitled to be reinstated. Therefore, the impugned award has been passed with a direction to reinstate with 50% back wages.

4. The learned Standing Counsel appearing on behalf of the petitioner submits that when the first respondent himself abandoned duty, the question of termination or otherwise seeking any relief, does not arise and the said submission sought to be repelled on behalf of the respondent No.1.

5. Considering the submissions made by the Standing Counsel and on perusal of the record, the only question which requires to be considered is whether there is valid termination of service or abandonment.

6. There is no dispute to the fact that the petitioner temporarily engaged the first respondent from 1.4.1987 to 30.08.1990 and from 1.9.1990 onwards he abstained duties. It is the case of the first respondent that he was not permitted to join duties and he raised the said dispute, which was taken up by the 2nd respondent. Admittedly, in this case, though the first respondent abstained duty from 1.9.1990, no action has been taken nor any proceedings initiated, much less, any amount has been credited as contemplated under Section 25(F) of I. D. Act, and therefore, the 2nd respondent has rightly come to a conclusion that there is a clear violation of the aforesaid provisions, and as such, termination on the ground of abandonment of service and automatically suspension of service would not arise. In the circumstances, this Court finds no infirmity warranting any interference of this Court.

7. Accordingly, this writ petition is dismissed. The petitioner is directed to deposit back wages as awarded by the 2nd respondent, within a period of three (3) weeks from the date of receipt of a copy of this order. On such deposit, the first respondent is permitted to withdraw the same without furnishing any security. No order as to costs.

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(B. PRAKASH RAO, J)

Date: 22.3.2005

Note: Issue C.C. in one week.

B.O.

Ksn

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Presiding Officer, Labour Court,

Guntur.

2. 2 CD copies

3. 1 CC to MR.RAGHAVENDRA REDDY